

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Energy Transfer – Hanover Ventures, LP

Docket Nos. ER01-2221-002
ER01-2221-003
ER06-296-000
EL05-111-002

ORDER DENYING REQUEST FOR REHEARING, DISMISSING UPDATED
MARKET POWER ANALYSIS, AND REJECTING NOTICE OF CANCELLATION

(Issued February 28, 2006)

1. In this order, we deny the rehearing request of Energy Transfer – Hanover Ventures, LP (ETHAN) filed in response to the Commission’s November 3, 2005 Order revoking ETHAN’s authority to make sales at market-based rates.¹ We also dismiss ETHAN’s updated market power analysis and reject ETHAN’s notice of cancellation filed with its request for rehearing.

Background

2. In an order issued on May 31, 2005, the Commission announced its policy with respect to entities that failed to comply with the conditions under which the Commission granted them market-based rate authority, namely, the requirement to submit an updated market power analysis.² The Commission directed the captioned market-based rate sellers, including ETHAN, to file their updated market analyses within 60 days from the date of issuance of that order or provide satisfactory support for why they should not be required to do so. If an entity failed to file an updated market power analysis or provide satisfactory support for why it should not be required to do so within 60 days, its market-based rate authority would be revoked.

¹ *3E Technologies, Inc.*, 113 FERC ¶ 61,124 (2005) (November 3 Order).

² *3E Technologies, Inc.*, 111 FERC ¶ 61,295 (2005) (May 31 Order). The May 31 Order established a refund effective date of 60 days after publication of notice of the investigation in the *Federal Register*. The notice was published in the *Federal Register* on June 10, 2005, with a refund effective date of August 9, 2005.

3. In the November 3 Order, the Commission revoked the market-based rate authority of the companies that failed to comply with the May 31 Order and terminated their market-based rate tariffs. Because ETHAN made no filing in response to the May 31 Order, ETHAN's market-based rate authority was revoked and its market-based rate tariff was terminated effective November 3, 2005.

4. On December 5, 2005, ETHAN filed a request for rehearing of the November 3 Order. ETHAN asks the Commission to permit ETHAN's market-based rate authorization to remain in effect until the date of its filing, and then to accept ETHAN's notice of cancellation effective on that date. ETHAN also asks the Commission to accept the updated market power analysis that it filed with its rehearing request.

5. ETHAN acknowledges that it failed to submit an updated market power analysis as required by the terms of its market-based rate authorization and subsequently by the May 31 Order. ETHAN asks the Commission to consider the following mitigating circumstances and states that its failure to file was the result of an administrative oversight. ETHAN notes that its sales under its market-based rate authority were extremely limited. ETHAN notes its small size (23 MW), the fact that it has never marketed power from third parties, and the fact that it has not made sales for more than one year. ETHAN states that its ultimate parent company, Hanover Compressor Company (Hanover Compressor), had not devoted significant time or resources to ETHAN's continuing operation due to the small size of ETHAN's facility and the limited nature of the sales under its market-based rate authorization.

6. Further, ETHAN states that the individual who had been responsible for ETHAN's regulatory requirements and was listed on the Commission's official service list in the captioned proceeding was an employee of the Energy Transfer Partners, the entities which were bought out by Hanover Compressors' subsidiaries as of July 30, 2003. ETHAN states that it did not realize this individual was the only representative for ETHAN on the Commission's official service list and failed to update its contact information with the Commission. ETHAN states it did not intend to violate the Commission's requirements of sellers with market-based rate authority and that it has made a good faith effort to comply with other market-based rate requirements, including timely submission of its Electric Quarterly Reports.

7. ETHAN states that it sold its generation facility on November 9, 2005, and therefore no longer engages in jurisdictional sales. For this reason, ETHAN has filed a notice of cancellation along with its rehearing request. ETHAN states that it has performed an updated market power analysis to show the Commission that it continued to lack any ability to exercise market power while it owned its generating facility.

Discussion

8. As the Commission stated in the May 31 Order, in the absence of an updated market power analysis, the Commission cannot exercise its statutory duty to ensure that market-based rates are just and reasonable and that market-based rate sellers continue to lack the potential to exercise market power so that market forces are in fact determining the price. The Commission directed ETHAN to submit an updated market power analysis in the May 31 Order in order to execute this statutory duty. In the November 3 Order, we revoked ETHAN's market-based rate authority in light of ETHAN's failure to comply with the May 31 Order.

9. The arguments set forth in ETHAN's request for rehearing of the November 3 Order are not sufficient to justify granting rehearing. ETHAN's small size, the lack of time or resources devoted to its operation by its parent company, and its out of date official service list do not relieve ETHAN of its responsibility to file an updated market power analysis as directed by the May 31 Order.³ We will therefore deny ETHAN's request for rehearing. The revocation of ETHAN's market-based rate authority is without prejudice to ETHAN making a new filing with the Commission under section 205 of the Federal Power Act to request market-based rate authority.⁴

10. Because ETHAN's market-based rate authorization was revoked and its market-based rate tariff terminated effective November 3, 2005, ETHAN's updated market

³ Rule 2010(k) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010(k) (2005), requires that any entity regulated by the Commission provide a person to receive service of documents pertaining to that entity. Rule 2010(k)(2) states that "[e]ach regulated entity has a continuing obligation to file with the Commission updated information concerning the corporate official or person designated to receive service." In addition, the Commission published notice of the May 31 Order in the *Federal Register* on June 10, 2005, 70 Fed. Reg. 33,888-89 (2005). *See* 18 C.F.R. § 385.2009 (2005). *See also* 44 U.S.C. § 1507 (2000) (Publication of an order in the *Federal Register* "is sufficient to give notice of the contents of the document to a person subject to or affected by it."); *Yakus v. United States*, 321 U.S. 414, 435 (1944) (citing 44 U.S.C. § 307, now codified as 44 U.S.C. § 1507).

⁴ 16 U.S.C. § 824d (2000).

power analysis is moot and we dismiss it as such.⁵ Because ETHAN's tariff was already terminated effective November 3, 2005, ETHAN's notice of cancellation is also rejected as moot.

The Commission orders:

(A) ETHAN's request for rehearing is hereby denied, as discussed in the body of this order.

(B) ETHAN's updated market power analysis is dismissed, as discussed in the body of this order.

(C) ETHAN's notice of cancellation is rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁵ We also note that the Commission requires that compliance filings, complaints, and other types of pleadings be submitted separately from requests for rehearing. Parties are not permitted to bundle different types of filing into a single pleading. *See, e.g., North Hartland, LLC*, 105 FERC ¶ 61,192 at P 21 (2003) (a request for interconnection may not be submitted with a rehearing request). Thus, even if ETHAN's updated market power analysis were not moot, we would reject it on this alternative basis.